

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE WESTERN DISTRICT OF WASHINGTON**
3 **AT TACOMA**

4 THE UNITED STATES OF AMERICA,)

5 Plaintiff,)

6 v.)

7 PUGET SOUND ENERGY, INC.)

8 Defendant.)

Civil Action No. _____

9 **STIPULATION AND ORDER OF SETTLEMENT**

10 WHEREAS, Plaintiff United States of America, on behalf of the United States
11 Environmental Protection Agency ("EPA"), filed a complaint in this action ("Complaint")
12 alleging that Defendant Puget Sound Energy, Inc. ("Defendant") violated sections 301(a)
13 and 311(b)(3) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1311(a) & 1321(b)(3), in connection
14 with a discharge of diesel fuel from its Crystal Mountain Emergency Generation Facility located
15 near Greenwater, Pierce County, Washington.

16 WHEREAS, the Complaint seeks the award of a civil penalty pursuant to
17 section 311(b)(7)(A) of the Act, 33 U.S.C. § 1321(b)(7)(A).

18 WHEREAS, Defendant does not admit any liability to the United States arising out of the
19 transactions or occurrences alleged in the Complaint.

20 WHEREAS, the United States and the Defendant (the "Parties") agree that settlement of
21 the United States' claims against Defendant, without further litigation, is in the public interest.

22 WHEREAS, the Parties further agree that the Court's approval of this Stipulation and
23 Order of Settlement ("Stipulation") is an appropriate means of resolving the claims in this action.

24 NOW THEREFORE, before the taking of any testimony, without adjudication or admission
25 of any issue of fact or law except as provided in Paragraph 1, below, and with the consent of the
26 Parties, IT IS HEREBY ADJUDGED, ORDERED AND DECREED as follows:

27 1. This Court has jurisdiction over the parties to, and the subject matter of, this
28 action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355, and sections 309(b) and 311(b)(7)(E) of

Stipulation and Order of Settlement

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1 the Act, 33 U.S.C. §§ 1319(b) & 1321(b)(7)(E). Venue is proper in this district under 28 U.S.C.
2 §§ 1391 and 1395(a), and section 311(b)(7)(E) of the Act, 33 U.S.C. § 1321(b)(7)(E). Notice of
3 the commencement of this action has been given to the State of Washington in accordance with
4 section 309(b) of the Act, 33 U.S.C. § 1319(b). Defendant waives any and all objections it may
5 have to the Court's jurisdiction, waives service of process in accordance with the requirements
6 set forth in the Federal Rules of Civil Procedure, and for purposes of this Stipulation submits to
7 the Court's jurisdiction.

8 2. No later than 30 days after the date this Stipulation is entered by the Court,
9 Defendant shall pay to the United States a civil penalty in the amount of \$471,900.00.

10 3. The payment shall be made by FedWire Electronic Funds Transfer ("EFT") in
11 accordance with current electronic funds transfer procedures, referencing USAO File
12 No. _____, EPA Docket No. CWA-10-2007-0050, and DOJ Case No. 90-5-1-1-09177. The
13 payment shall be made in accordance with instructions provided to Defendant by the Financial
14 Litigation Unit of the U.S. Attorney's Office for the Western District of Washington. Any EFTs
15 received at the DOJ lockbox bank after 11:00 a.m. Eastern Time will be credited on the next
16 business day. In accordance with section 311(s) of the Act, 33 U.S.C. § 33 U.S.C. § 1321(s),
17 amounts received by the United States pursuant to this Stipulation shall be deposited in the Oil
18 Spill Liability Trust Fund. No later than five business days after payment, Defendant shall
19 provide written notice of payment and a copy of any transmittal documentation to DOJ, EPA,
20 and the U.S. Attorney's Office at the addresses below.

21 As to DOJ: Chief, Environmental Enforcement Section
22 Environment and Natural Resources Division
23 U.S. Department of Justice
24 P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ No. 90-5-1-1-09177

25 As to EPA: Stephanie Mairs
26 Assistant Regional Counsel
27 U.S. Environmental Protection Agency Region 10
28 Mail Code: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Re: EPA Docket No. CWA-10-2007-0050

1 As to the U.S. Attorney's Office

Financial Litigation Unit
Office of the United States Attorney
700 Stewart Street, Suite 5220
Seattle, WA 98101
Re: USAO No. _____

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4 4. If the civil penalty is not fully paid when due, Defendant shall pay a stipulated
5 penalty of \$1,000 per day for each day that the payment is delayed beyond the due date. Further,
6 Defendant shall pay interest on the overdue amount, from the original due date to the date of
7 payment, at the statutory judgment rate in accordance with 28 U.S.C. § 1961. Further,
8 Defendant shall be liable for costs, including costs of attorney time, incurred by the United
9 States to collect any amount due under this Stipulation.

10 5. All payments required by this Stipulation are penalties within the meaning of
11 Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not a tax deductible
12 expenditure for purposes of federal law.

13 6. The payment by Defendant under this Stipulation shall constitute full settlement
14 and satisfaction of the civil penalty claims asserted by the United States in the above-captioned
15 action pursuant to section 311 of the Clean Water Act, 33 U.S.C. § 1321, as alleged in the
16 Complaint.

17 7. The United States reserves, and this Stipulation is without prejudice to, all rights
18 against Defendant with respect to all other matters not asserted by the United States in the
19 Complaint, including, but not limited to, natural resource damages, recovery of response costs,
20 and any criminal liability. The Defendant shall not raise res judicata, claim preclusion, issue
21 preclusion, or any similar defense in response to any claim not asserted in the Complaint.

22 8. This Stipulation shall be lodged with the Court for a period of not less than 30
23 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States
24 reserves the right to withdraw or withhold its consent if the comments regarding the Stipulation
25 disclose facts or considerations indicating that the Stipulation is inappropriate, improper, or
26 inadequate.

27 9. This Stipulation will terminate when the Defendant has paid the civil penalty and
28 any stipulated penalties and interest required by this Stipulation.

10. Each party shall bear its own costs and attorneys' fees in this matter, except as provided in paragraph 4, above.

11. The undersigned representative of Defendant, and the Deputy Section Chief of the Environmental Enforcement Section, Environment and Natural Resources Division, each certify that he or she is fully authorized to enter into the terms and conditions of this Stipulation and to execute and legally bind Defendant and the United States, respectively, to it.

SO ORDERED this day of , 2008.

UNITED STATES DISTRICT JUDGE

**FOR PLAINTIFF
THE UNITED STATES OF AMERICA:**

Date: _____

ELLEN M. MAHAN
Deputy Section Chief

Date: 4/11/08

ERIK M. ZIMMERMAN
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20044-7611

Date: 4/11/2008

EDWARD J. KOWALSKI
Regional Counsel
U.S. Environmental Protection Agency Region 10
Mail Code: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

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3 **FOR SETTLING DEFENDANT**
4 **PUGET SOUND ENERGY, INC.:**

5 Date:

4.10.08

6 ERIC MARKELL

7 Executive Vice President/Chief Financial Officer
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